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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

COLONIZE MEDIA, INC.,

Plaintiff,

v.

TATE A. PALMER, TRIWOLF
MEDIA, LLC and TANGO MULTI
MEDIA PRODUCTIONS, LLC,

Defendants.

) **Case No.:**

) **PLAINTIFF'S COMPLAINT AND
JURY DEMAND**

) **Judge:**

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1 Plaintiff Colonize Media, Inc. (“Colonize” or “Plaintiff”), through its undersigned
2 attorneys, alleges the following against Defendants:

3 **PREFATORY STATEMENT**

4 **JURISDICTION AND VENUE**

5 1. This is a civil action in which Plaintiff seeks declaratory relief, monetary
6 damages and injunctive relief against Defendants.

7 2. This Court has jurisdiction under 18 U.S.C. § 1030 *et seq.*, 18 U.S.C. §
8 1836 *et seq.*; and 28 U.S.C. § 1331 (federal question jurisdiction).

9 3. This Court has supplemental jurisdiction over all common law claims
10 pursuant to 28 U.S.C. § 1367.

11 4. This Court has personal jurisdiction over Defendants, and venue in this
12 District is proper under 28 U.S.C. § 1391(b) and (d) and 28 U.S.C. § 1400(a), in that the
13 Defendants or their agents are conducting business in this District, Colonize is located
14 in, and conducts business in, this District, and a substantial part of the acts of
15 infringement complained of herein occurred in this District.

16 **PARTIES**

17 5. Colonize is a corporation organized and existing under California law and
18 authorized to do business in California, with its principal place of business in the State
19 of California, County of Stanislaus.

20 6. Colonize is primarily engaged in the business of digital music distribution
21 and monetization.

22 7. Plaintiff is informed and believes, and thereon alleges, that defendant Tate
23 Palmer (“Palmer”) is a natural person with a place of residence at 5278 College View
24 Avenue, Los Angeles, California 90041.

25 8. Colonize is informed and believes, and thereon alleges, that Defendant
26 Triwolf Media, LLC (“Triwolf”) is a limited liability company duly organized and
27 existing under the laws of the State of California with its principal place of business 548
28 East Alisal Street, Salinas, California 93905.

1 9. Colonize is informed and believes, and thereon alleges, that Triwolf is
2 primarily engaged in the business of exploiting intellectual property rights, including
3 sound recordings.

4 10. Colonize is informed and believes, and thereon alleges, that Defendant
5 Tango Multi Media Productions, LLC (“Tango”) is a limited liability company duly
6 organized and existing under the laws of the State of California with its principal place
7 of business at 548 East Alisal Street, Salinas, California 93905.

8 11. Plaintiff is informed and believes, and thereon alleges, that Tango is
9 primarily engaged in the business of digital music distribution.

10 12. Tango is a competitor of Colonize.

11 13. Plaintiff is informed and believes, and thereon alleges, that Triwolf is the
12 owner of Tango, the parent company of Tango and/or otherwise affiliated with Tango.

13 14. Plaintiff is informed and believes, and thereon alleges, that Triwolf
14 dominates and controls the operations of Tango.

15 15. Plaintiff is informed and believes, and thereon alleges, that Palmer is an
16 officer, director and/or an employee of Triwolf.

17 16. Plaintiff is informed and believes, and thereon alleges, that Palmer is an
18 officer, director and/or an employee of Tango.

19 **FACTUAL ALLEGATIONS**

20 17. Colonize is a global leader in the business of digital music distribution and
21 monetization.

22 18. Colonize digitally distributes, monetizes and administers hundreds of
23 thousands of songs (the recorded performance of those songs technically hereinafter
24 referred to as “sound recordings”) belonging to its clients that primarily consist of record
25 labels and independent recording artists.

26 19. Colonize distributes, markets and promotes the sound recordings under its
27 management to digital exploitation platforms, such as Spotify, YouTube, iTunes, Apple
28 Music and Amazon Music (collectively “Retail Platforms”), which then make the sound

1 recordings accessible to consumers.

2 20. Colonize has spent over ten years and hundreds of thousands of dollars
3 cultivating relationships and goodwill with the Retail Platforms and developing unique
4 and proprietary business practices that provide Colonize with an advantage over its
5 competitors.

6 21. In order to effectively digitally distribute, monetize and administer the
7 sound recordings exploited on the Retail Platforms, Colonize must obtain an
8 International Standard Recording Code (“SR Code”) which, in essence, acts as a unique
9 digital fingerprint for the particular sound recording to which the SR Code is assigned.

10 22. The SR Code helps the sound recording owner or administrator to properly
11 track and account for the digital exploitation of the sound recording, and to prevent the
12 improper exploitation of unauthorized digital copies of the same sound recording.

13 23. Both Colonize and the Retail Platforms rely on SR Codes to manage the
14 exploitation of the sound recordings given to them and to ensure that the appropriate
15 rights holder is paid whatever remuneration to which the rights holder is entitled.

16 24. Obtaining SR Codes for all of the sound recordings administered and
17 managed by Colonize is time consuming and expensive and requires significant effort.
18 Colonize must input ownership and other information regarding each sound recording
19 into the international SR Code system and pay a fee for each code issued.

20 25. In addition to the SR Codes, Colonize also compiles other proprietary
21 metadata created by Colonize relating to the sound recordings it distributes (the
22 “Metadata”) in order to track and analyze the exploitation of those particular sound
23 recordings and to create royalty statements for its clients.

24 26. The SR Codes and Metadata for the sound recordings that Colonize
25 distributes was kept on a hard drive to which only officers of Colonize were given
26 authorization to access (“Hard Drive”).

27 27. Colonize is informed and believes, and thereon alleges, that The Hard Drive
28 contained SR Codes and Metadata for thousands of sound recordings.

1 28. The information on the Hard Drive took hundreds of hours of effort and
2 cost thousands of dollars to compile.

3 29. The Hard Drive essentially functioned as an electronic client and inventory
4 list which was confidential and not available to the public.

5 30. Other than two of Colonize's officers, no employees or third-party parties
6 had access to the SR Codes, Metadata or Hard Drive.

7 31. As part of its business operations, Colonize creates royalty statements for
8 its clients that itemize the source and amounts of royalties payable as a result of
9 Colonize's distribution and monetization of the sound recordings that it manages.

10 32. The creation of these royalty statements requires tremendous effort,
11 including the tedious review and copying of a large amount of information received by
12 Colonize from its many Retail Platform business affiliates.

13 33. In or about September 2017, Colonize engaged a computer programmer to
14 create a custom computer program to automate and optimize Colonize's collection,
15 compilation and analysis of the information it receives from its Retail Platform
16 business affiliates and create royalty statements for Colonize's clients ("Proprietary
17 Computer Program").

18 34. The Proprietary Computer Program was made for Colonize as a "work-
19 for-hire," as defined by the U.S. Copyright Act.

20 35. The Proprietary Computer Program was commissioned by Colonize and
21 paid for by Colonize.

22 36. As part of its business operations, Colonize has also developed a unique,
23 proprietary and confidential business process and structure that concerns the
24 acquisition, cataloging, digital distribution and highly profitable monetization of sound
25 recordings which gives Colonize an advantage over its competitors ("Business
26 Process").

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Colonize's Hiring of Palmer

37. On or about October 1, 2015, Colonize hired Palmer to act as its Chief Operations Officer.

38. As the Chief Operations Officer, Palmer was responsible for overseeing the digital distribution and monetization of over two hundred fifty thousand (250,000) sound recordings under Colonize's management and administration.

39. Palmer's job duties included, but were not limited to: (i) interfacing and negotiating with the Retail Platforms; (ii) creating and managing the technological structures and protocols for the digital storage, distribution and monetization of the sound recordings under Colonize's management and administration; and (iii) developing business and technological protocols for maximizing the revenue from the distribution and monetization of the sound recordings under Colonize's management and administration.

40. Palmer was also responsible for the creation and maintenance of Colonize's data and intellectual protection structures, processes and protocols.

41. As the Chief Operations Officer, Palmer was given access to all of Colonize's proprietary and confidential business information, including but not limited to, the Hard Drive, SR Codes, Metadata, Proprietary Computer Program, Business Process, and client information.

42. Palmer was made expressly aware that the Hard Drive, SR Codes, Metadata, Proprietary Computer Program, Business Process, and client information were important business assets of Colonize, were to be kept confidential and were for Colonize's use only.

43. Palmer was hired by Colonize as a full-time employee and was expected to dedicate his efforts diligently and exclusively to Colonize.

44. At no time was Palmer authorized by Colonize to create his own digital music distribution company, use any of Colonize's proprietary and confidential information and business processes for his own benefit, or to otherwise compete with

Colonize.

Palmer's Betrayal

45. In about March 2019, Colonize discovered that Palmer organized and started his own digital music distribution company in January of 2019, while employed by Colonize, using the same proprietary knowledge, information and processes learned by Palmer as an officer of Colonize.

46. Colonize also discovered that Palmer was soliciting existing clients of Colonize as well as prospects Palmer knew were being targeted by Colonize, all while still an officer and employee of Colonize.

47. On or about March 20, 2019, Colonize terminated Palmer's employment as a result of his inappropriate actions.

48. Shortly thereafter, Colonize discovered that Palmer had stolen the Hard Drive holding Colonize's SR Codes and Metadata, as well as a laptop containing the only copy of the Proprietary Computer Program.

49. Immediately after learning of Palmer's theft, Colonize contacted Palmer and demanded that he immediately return the Hard Drive and laptop but Palmer refused to do so.

50. As Chief Operations officer of Colonize, Palmer also had exclusive knowledge of certain access codes used by Colonize to access its accounts with its Retail Platform affiliates that monetized the sound recordings that Colonize manages ("Access Codes").

51. These accounts contained the funds that were generated by the Retail Platforms as a result of their monetization efforts and that were due to Colonize.

52. After Palmer's employment with Colonize was terminated, Colonize discovered that Palmer had not tendered the Access Codes to anyone at Colonize, and as such, Colonize could not access these accounts.

53. Colonize contacted Palmer and demanded that he tender the Access Codes, but he refused.

1 54. Palmer had no right to use or retain these Access Codes after his
2 employment with Colonize was terminated.

3 55. A large portion of the funds in these accounts were due to be paid by
4 Colonize to its clients.

5 56. As a result of Palmer's refusal to give Colonize the Access Codes, it took
6 Colonize a significant amount of time and effort to regain exclusive access to the
7 accounts and the funds held in those accounts.

8 57. As a result of Colonize's inability to access the accounts, it was unable to
9 timely pay some of its clients the funds due to them.

10 58. This unnecessarily long delay in paying its clients damaged Colonize's
11 goodwill and credibility with some of its clients.

12 59. The inability to access these funds also impinged Colonize's cash flow and
13 slowed Colonize's business operations, thereby giving Colonize's competitors,
14 including Triwolf and Tango, a competitive advantage.

15 **Triwolf and Tango's Unfair Competition and Exploitation**
16 **of Stolen Trade Secrets**

17 60. In about August 2019, Colonize came to learn that Palmer had obtained
18 new employment with Tango, one of Colonize's competitors as well as Tango's parent
19 company, Triwolf.

20 61. Colonize is informed and believes, and thereon alleges, that after Tango
21 employed Palmer, that Palmer gave Tango copies of Colonize's SR Codes, Metadata
22 and Proprietary Computer Program and that Tango started exploiting them to its
23 advantage.

24 62. Upon learning that Palmer was now employed by Tango, in or about August
25 2019, Colonize contacted Tango and notified Tango that the confidential information in
26 Palmer's possession was the property of Colonize and demanded that Tango cease and
27 desist from using or otherwise exploiting Colonize's property and proprietary business
28 information.

63. Despite receiving the notice from Colonize, Tango refused to return the Hard Drive and laptop containing the Proprietary Computer Program or to cease using or otherwise exploiting Colonize's property and proprietary business information.

64. Tango's possession and use of the Hard Drive, Metadata and Proprietary Computer Program gives Tango a competitive advantage over Colonize at Colonize's cost and expense.

65. Plaintiff is informed and believes, and thereon alleges, that Palmer refused to give Colonize the Access Codes in order to provide an advantage to Tango and Triwolf.

AS AND FOR A FIRST CAUSE OF ACTION
(Violation of Defending Trade Secrets Act, 18 U.S.C. § 1836)
(by Colonize against all Defendants)

66. Colonize repeats, re-alleges and incorporates by reference in this paragraph the allegations set forth in Paragraphs 1 through 66, inclusive, and incorporate them by reference as though set forth fully herein.

67. Colonize's SR Codes, Metadata, Proprietary Computer Program, customer list and the Business Process constitute valuable trade secrets.

68. Colonize spent substantial time and resources developing these trade secrets.

69. These trade secrets derive independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure.

70. Colonize's trade secrets are the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

71. These trade secrets were reasonably protected and safeguarded by Colonize, and Plaintiff took reasonable steps to prevent their disclosure or dissemination, including but not limited to, only giving access to these trade secrets to two (2) officers of Colonize and no one else and storing them in Colonize's Chief

1 Operations Officer's locked office.

2 72. In addition, as Chief Operations Officer, Palmer was responsible for
3 developing and implementing robust data, intellectual property and proprietary
4 information protection processes and protocols.

5 73. Palmer misappropriated these trade secrets by improper means since, after
6 his employment with Colonize was terminated and he was no longer entitled to access
7 or use them, Palmer stole a laptop containing the only copy of Plaintiffs' Proprietary
8 Computer Software, and the Hard Drive containing Plaintiffs' Metadata and SR Codes
9 and, upon information and belief, gave them to Triwolf and Tango.

10 74. Colonize is informed and believes, and thereon alleges, that Palmer has also
11 disclosed Colonize's trade secrets to Triwolf and Tango and they are using Colonize's
12 trade secrets to benefit themselves without authorization from Colonize.

13 75. Triwolf and Tango misappropriated Colonize's trade secrets by improper
14 means because they knew, and/or had reason to know, that Palmer was Colonize's
15 former Chief Operations Officer before they hired him, and they knew that the trade
16 secrets, by their very nature, were confidential and proprietary to Colonize and that
17 Palmer could not have obtained the trade secrets unless he stole them from Colonize or
18 obtained them by improper means.

19 76. Colonize is informed and believes, and thereon alleges, that Defendants are
20 using the wrongfully-acquired trade secrets to further their own business interests by,
21 among other things: (i) using Colonize's Proprietary Computer Program to more
22 efficiently and profitably operate their business; (ii) using Colonize's proprietary
23 Metadata to more efficiently and profitably manage the sound recordings under
24 Defendants' control; (iii) using Colonize's proprietary Metadata to solicit Colonize's
25 clients; (iv) using Colonize's Business Process to run their businesses more efficiently
26 and profitably and to better compete with Colonize and (v) impeding Colonize, a
27 business competitor, by prohibiting Colonize from exclusively using its own trade
28 secrets.

1 77. Defendants' actions have damaged Colonize in an amount not readily
2 ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars
3 (\$10,000,000).

4 **AS AND FOR A SECOND CAUSE OF ACTION**

5 **(Violation of CA Uniform Trade Secrets Act, Cal. Civ. Code § 3426.1)**

6 **(by Colonize against all Defendants)**

7 78. Colonize repeats, re-alleges and incorporates by reference in this paragraph
8 the allegations set forth in Paragraphs 1 through 77, inclusive, and incorporate them by
9 reference as though set forth fully herein.

10 79. Colonize's SR Codes, Metadata, Proprietary Computer Program, customer
11 list and the Business Process constitute valuable trade secrets.

12 80. Colonize spent substantial time and resources developing these trade
13 secrets.

14 81. These trade secrets derive independent economic value, actual and
15 potential, from not being generally known to, and not being readily ascertainable by
16 proper means by, other persons who can obtain economic value from their disclosure.

17 82. Colonize's trade secrets are the subject of efforts that are reasonable under
18 the circumstances to maintain its secrecy.

19 83. These trade secrets were reasonably protected and safeguarded by
20 Colonize, and Plaintiffs took reasonable steps to prevent their disclosure or
21 disseminations, including but not limited to, only giving access to these trade secrets to
22 two (2) officers of Colonize and no one else and storing them in Colonize's Chief
23 Operations Officer's locked office.

24 84. In addition, as Chief Operations Officer, Palmer was responsible for
25 developing and implementing robust data, intellectual property and proprietary
26 information protection processes and protocols, all for the exclusive benefit for
27 Colonize.

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1 85. Palmer misappropriated these trade secrets by improper means because,
2 after his employment with Colonize was terminated and he was no longer entitled to
3 access or use them, Palmer stole a laptop containing the only copy of Plaintiff's
4 Proprietary Computer Software, and the Hard Drive containing Plaintiff's Metadata and
5 SR Codes and, upon information and belief, Palmer gave them to Triwolf and Tango.

6 86. Colonize is informed and believes, and thereon alleges, that Palmer has also
7 disclosed Colonize's trade secrets to Triwolf and Tango and that they are using
8 Colonize's trade secrets to benefit themselves without authorization from Colonize.

9 87. Triwolf and Tango misappropriated Colonize's trade secrets by improper
10 means because they knew, and/or had reason to know, that Palmer was Colonize's
11 former Chief Operations Officer before they hired him, and they knew that the trade
12 secrets, by their very nature, were confidential and proprietary to Colonize and that
13 Palmer could not have obtained the trade secrets unless he stole them from Colonize or
14 obtained them by improper means.

15 88. Colonize is informed and believes, and thereon alleges, that Defendants are
16 using the wrongfully-acquired trade secrets to further their own business interests by,
17 among other things: (i) using Colonize's Proprietary Computer Program to more
18 efficiently and profitably operate their business; (ii) using Colonize's proprietary
19 Metadata to more efficiently and profitably manage the sound recordings under
20 Defendants' control; (iii) using Colonize's proprietary Metadata to solicit Colonize's
21 clients; (iv) using Colonize's Business Process to run their businesses more efficiently
22 and profitably and to better compete with Colonize and (v) impeding Colonize, a
23 business competitor, by prohibiting Colonize from exclusively using its own trade
24 secrets.

25 89. Defendants' actions have damaged Colonize in an amount not readily
26 ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars
27 (\$10,000,000).

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1 90. Defendants' actions were willful and malicious and done with the intent to
2 harm Colonize.

3 91. As such, Colonize is also entitled to exemplary damages and statutory
4 attorney's fees pursuant to Cal. Civ. Code § 3426.3(c).

5 **AS AND FOR A THIRD CAUSE OF ACTION**

6 **(Violation of Unfair Competition Laws Under**

7 **California Business & Professions Code § 17200 et seq.)**

8 **(by Colonize against all Defendants)**

9 92. Colonize repeats, re-alleges and incorporates by reference in this paragraph
10 the allegations set forth in Paragraphs 1 through 91, inclusive, and incorporates them by
11 reference as though set forth fully herein.

12 93. Colonize is informed and believes and thereon alleges that Defendants'
13 conduct as alleged herein constitutes "unlawful," "unfair" and/or "fraudulent" business
14 practices in violation of the unfair competition provisions of California Business &
15 Professions Code § 17200, et seq.

16 94. The wrongful conduct of Defendants includes, but is not limited to, the use
17 of the Hard Drive, Proprietary Computer Program, SR Codes, Metadata, Business
18 Process and Colonize's client list.

19 95. Defendants' use of the Hard Drive, Proprietary Computer Program, SR
20 Codes, Metadata and Business Process allows the Defendants to operate more
21 efficiently, gives Defendants significant insight into Colonize's operations and provides
22 Defendants with confidential knowledge concerning Colonize's clients and Colonize's
23 business dealings with those clients at the expense of Colonize.

24 96. Defendants' use and possession of the Hard Drive, Proprietary Computer
25 Program, SR Codes, Metadata and Business Process provides Defendants with an unfair
26 competitive advantage by depriving Colonize of both the exclusive and general use of
27 same.

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1 97. Defendants' actions have harmed Colonize and deprived it of significant
2 business, as well as resulting in lost income, intellectual property, tangible property, and
3 time and money invested in developing and compiling the Proprietary Computer
4 Program, SR Codes, Metadata and Business Processes stolen by Palmer.

5 98. Colonize is informed and believes, and thereon alleges, that Defendants
6 have unlawfully used and continue to unlawfully use the above referenced assets stolen
7 from Colonize for improper commercial gain, including but not limited to, soliciting
8 Colonize's clients and otherwise inducing or attempting to induce Colonize's clients to
9 terminate their business relationships with Colonize and take their business to Tango
10 and/or Palmer.

11 99. As a result of Defendants' conduct, Colonize is entitled to an order of
12 restitution against Defendants.

13 100. California Business and Professions Code § 17203 authorizes injunctive
14 and restitutionary relief against any person who has engaged or proposes to engage in
15 unfair competition.

16 101. Defendants have been unjustly enriched by virtue of their unfair
17 competition as set forth herein. Colonize requests that the Court order Defendants to
18 restore to Colonize all monies and/or property acquired by means of Defendants'
19 unlawful, unfair and fraudulent business practices.

20 102. Accordingly, Colonize is entitled to damages from Defendants in an
21 amount not readily ascertainable, but to be proven at trial and believed to be in excess
22 of Ten Million Dollars (\$10,000,000.00).

23 103. As a direct and proximate result of Defendants' unfair competition,
24 Colonize has suffered injury and harm and will continue to suffer injury and harm unless
25 Defendants are enjoined from the conduct alleged hereinabove.

26 104. Colonize is entitled to, and requests, temporary, preliminary and permanent
27 injunctive relief against Defendants. Unless Defendants are restrained, they will
28 continue to injure Colonize's business.

105. Colonize has no adequate remedy at law for the injuries currently being suffered in that Defendants will continue to engage in unfair competition.

AS AND FOR A FOURTH CAUSE OF ACTION

(Unjust Enrichment)

(by Colonize against all Defendants)

106. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph the allegations set forth in Paragraphs 1 through 105, inclusive, and incorporates them by reference as though set forth fully herein.

107. Upon information and belief, Palmer and Tango, without the consent of Colonize, unlawfully exploited Plaintiff's confidential and proprietary business information, resources, trade secrets and intellectual property.

108. Palmer, individually as a representative of his own company that competed in the same field as Plaintiff and as an employee of Tango, has received revenue from such unlawful exploitation of Colonize's trade secrets and intellectual property. Tango, as Palmer's current employer, and a competitor in the same field as Plaintiff, has received revenue from such unlawful exploitation.

109. Prior to Palmer's unlawful acts, Colonize's trade secrets and intellectual property were unique to Colonize in the industry and Colonize was the only company in the industry obtaining an economic benefit from said trade secrets and intellectual property.

110. Colonize was also the only company in the industry that funded the research, development and creation of its trade secrets and intellectual property. Colonize invested its own time and resources in the development and protection of its trade secrets and intellectual property.

111. Such unlawful exploitation of Colonize's trade secrets and intellectual property caused Palmer and Tango to obtain an economic benefit over and above what they otherwise would have achieved, without having to expend the time, money and resources that Colonize had already borne the cost of in creating the trade secrets and

1 intellectual property.

2 112. By reason of the acts of Palmer and Tango as alleged above, Palmer and
3 Tango have been unjustly enriched at Colonize's expense under such circumstances that
4 equity and good conscience require that Palmer and Tango should make restitution to
5 Colonize.

6 113. Accordingly, Colonize is entitled to damages from Defendants in an
7 amount not readily ascertainable, but to be proven at trial and believed to be in excess
8 of Ten Million Dollars (\$10,000,000.00).

9 **AS AND FOR A FIFTH CAUSE OF ACTION**

10 **(Violation of the Computer Fraud and Abuse Act- 18 U.S.C. § 1030 et seq.)**

11 **(by Colonize against Palmer)**

12 114. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph
13 the allegations set forth in Paragraphs 1 through 113, inclusive, and incorporates them
14 by reference as though set forth fully herein.

15 115. Palmer accessed Colonize's protected computer network, systems and
16 offices containing computer equipment on which the network and systems could be
17 used, without authorization, to remove, disable or appropriate and pass off as his own,
18 the trade secrets, confidential business information, SR Codes, Proprietary Computer
19 Software and Metadata, as well as tangible computer equipment owned and controlled
20 by Colonize.

21 116. Palmer did so with the intent to defraud and otherwise harm Colonize
22 because Palmer economically competed with Colonize, by starting his own competing
23 company while employed by Colonize and subsequently working for Colonize's
24 competitor, Tango.

25 117. Palmer's actions caused financial harm to Colonize: (i) in the form of lost
26 income; (ii) damage to its intellectual property and tangible property; (iii) the time and
27 money invested in developing and compiling the SR Codes, Proprietary Computer
28 Program, and Metadata stolen by Palmer; and (iv) the income generated by Palmer's

1 clients that he has solicited, and otherwise induced or attempted to induce, to terminate
2 their business relationships with Colonize in order to take their business to Palmer and/or
3 his current employer, Tango. As such, Palmer received an economically competitive
4 advantage over Colonize.

5 118. Palmer's conduct has caused a loss in excess of Five Thousand Dollars
6 (\$5,000.00) to Colonize during a one-year period. As such, pursuant to 18 USC §
7 1030(g), Colonize is entitled to damages in an amount not readily ascertainable, but to
8 be proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000).

9 119. As a result of Palmer's conduct, Colonize has suffered irreparable and
10 incalculable harm, for which Colonize has no adequate remedy at law, and which will
11 continue unless Palmer is enjoined from further unauthorized access to and use of
12 Colonize's trade secrets, SR Codes, Proprietary Computer Program, Business Process,
13 Metadata, tangible computer equipment, systems, and network.

14 120. As such, Colonize is entitled to damages from Palmer in an in excess of
15 Ten Million Dollars (\$10,000,000.00), together with injunctive relief prohibiting Palmer
16 from further accessing, using, or benefitting from in any way, Colonize's trade secrets,
17 SR Codes, Proprietary Computer Program, Business Process, Metadata, tangible
18 computer equipment, systems, and network.

19 **AS AND FOR A SIXTH CAUSE OF ACTION**

20 **(Violation of California Comprehensive Computer Data Access and Fraud Act-**
21 **California Penal Code § 502)**
22 **(by Colonize against Palmer)**

23 121. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph
24 the allegations set forth in Paragraphs 1 through 120, inclusive, and incorporates them
25 by reference as though set forth fully herein.

26 122. Palmer knowingly accessed and without permission used Colonize's trade
27 secrets, confidential business information, SR Codes, Proprietary Computer Program,
28 Hard Drive, Business Process, and Metadata, as well as tangible computer equipment in

1 order to devise and/or execute a scheme to defraud and deceive in violation of California
2 Penal Code § 502(c)(1).

3 123. Palmer knowingly accessed and without permission took, copied, and/or
4 used Colonize's trade secrets, confidential business information, SR Codes, Proprietary
5 Computer Program, Hard Drive, Business Process, and Metadata, as well as tangible
6 computer equipment from Colonize's systems, networks and offices in violation of
7 California Penal Code § 502(c)(2).

8 124. Palmer knowingly and without permission used or caused to be used
9 Colonize's trade secrets, confidential business information, SR Codes, Proprietary
10 Computer Program, Hard, Drive, Business Process, and Metadata, as well as tangible
11 computer equipment in violation of California Penal Code § 502(c)(3).

12 125. Palmer knowingly and without permission accessed and removed trade
13 secrets, confidential business information, SR Codes, Proprietary Computer Program,
14 Hard Drive, Business Process, and Metadata, as well as tangible computer equipment
15 from Colonize's systems, networks and offices in violation of California Penal Code §
16 502(c)(4).

17 126. Palmer knowingly and without permission accessed or caused to be
18 accessed Colonize's trade secrets, confidential business information, SR Codes,
19 Proprietary Computer Program, Hard Drive, Business Process, and Metadata, as well as
20 tangible computer equipment, systems, networks and offices in violation of California
21 Penal Code § 502(c)(7).

22 127. Colonize suffered and continues to suffer damage as a result of Palmer's
23 violations of the California Penal Code § 502 identified above.

24 128. Palmer's conduct also caused irreparable and incalculable harm and
25 injuries to Colonize, and, unless enjoined, will cause further irreparable and incalculable
26 injury, for which Colonize has no adequate remedy at law.

27 129. Palmer willfully violated California Penal Code § 502 in disregard and
28 derogation of Colonize's rights and Palmer's actions as alleged above were carried out

1 with oppression, fraud and malice.

2 130. Pursuant to California Penal Code § 502(e), Colonize is entitled to
3 injunctive relief, compensatory damages, punitive or exemplary damages, attorneys'
4 fees, costs and other equitable relief.

5 **AS AND FOR A SEVENTH CAUSE OF ACTION**

6 **(Trespass to Chattels)**

7 **(by Colonize against Palmer)**

8 131. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph
9 the allegations set forth in Paragraphs 1 through 130, inclusive, and incorporates them
10 by reference as though set forth fully herein.

11 132. At all relevant times herein alleged, Colonize owned and had the right to
12 exclusively possess the Hard Drive, Proprietary Computer Program, SR Codes, and
13 Metadata.

14 133. Palmer engaged in the wrongful acts specifically alleged above, including
15 accessing, possessing and controlling Colonize's Hard Drive, Proprietary Computer
16 Program, SR Codes, and Metadata in excess of his authorization, and for the sole
17 purpose of gaining access to Colonize's electronically stored trade secrets, confidential
18 information and proprietary information for the purpose of misappropriating the same
19 to his own unauthorized use, for the express benefit of himself and Tango.

20 134. Palmer, without Colonize's knowledge or consent, interfered with
21 Colonize's exclusive rights to possess, access and control the Hard Drive, Proprietary
22 Computer Program, SR Codes, and Metadata. Said interference was both substantial and
23 continuing, amounting to a complete usurpation of Colonize's possession, control and
24 access to its property.

25 135. As a result, Colonize has suffered substantial harm and detriment, having
26 lost possession, control and access to those chattels for a substantial time, which is and
27 has been continuing in nature.

28 ///

1 136. Accordingly, Colonize is entitled to damages in an amount not readily
2 ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars
3 (\$10,000,000.00).

4 **AS AND FOR AN EIGHTH CAUSE OF ACTION**

5 **(Conversion)**

6 **(by Colonize against Palmer)**

7 137. Colonize repeats, re-alleges and incorporates by reference in this paragraph
8 the allegations set forth in Paragraphs 1 through 136, inclusive, and incorporates them
9 by reference as though set forth fully herein.

10 138. Colonize owned, possessed, and had a right to possess the Hard Drive,
11 Proprietary Computer Program, SR Codes, and Metadata for purposes of conducting its
12 business.

13 139. Palmer engaged in the wrongful acts specifically alleged above, including
14 taking the Hard Drive, Proprietary Computer Program, SR Codes, and Metadata from
15 Colonize without permission or authority to do so. In so doing, Palmer intentionally and
16 substantially interfered with Colonize's ownership, possession, and right to possess the
17 Hard Drive, Proprietary Computer Program, SR Codes, and Metadata and caused harm
18 to Colonize.

19 140. Colonize did not consent to Palmer's removal of this property and data.

20 141. Colonize has demanded the immediate return of the Hard Drive,
21 Proprietary Computer Program, SR Codes, and Metadata. Notwithstanding Colonize's
22 demand, Palmer has refused to return the property to Colonize.

23 142. Because of Palmer's wrongful conversion of Colonize's property, Colonize
24 has sustained damages, the exact amount of which is not readily ascertainable, but to be
25 proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000.00).

26 143. Palmer has acted with fraud, oppression, and/or malice with the deliberate
27 intent to injure Colonize's business and acted with conscious disregard for Colonize's
28 rights, thereby warranting an award of punitive damages in an amount appropriate to

1 punish Palmer and deter others from engaging in similar misconduct.

2 **AS AND FOR A NINTH CAUSE OF ACTION**

3 **(Breach and Duty of Loyalty and Fidelity)**

4 **(by Colonize against Palmer)**

5 144. Colonize repeats, re-alleges and incorporates by reference in this paragraph
6 the allegations set forth in Paragraphs 1 through 143, inclusive, and incorporates them
7 by reference as though set forth fully herein.

8 145. Palmer was employed by Colonize in a position of trust and confidence,
9 specifically as a Chief Operating Officer. While so employed, Palmer was under a duty
10 to act solely for the benefit of Colonize and not contrary to Colonize's interests with
11 respect to all matters connected with this employment relationship.

12 146. While so employed as an officer in this position of trust and confidence,
13 Palmer breached his duty to Colonize by, among other things, neglecting his professional
14 obligations while still working for Colonize, forming and working on behalf of a
15 competing business while still employed by Colonize, disparaging Colonize while still
16 working for Colonize and soliciting Colonize's clients and prospective clients for the
17 benefit of himself and/or the benefit of others, while employed by Colonize.

18 147. California Labor Code section 2863 expressly provides that an employee
19 who has any business to transact on his own account, similar to that entrusted him by
20 his employer, shall always give the preference to the business of the employer.

21 148. As a proximate result of Palmer's breach of his duties, Colonize has
22 suffered actual and/or consequential damages in an amount not readily ascertainable, but
23 to be proven at trial and believed to be in excess of Ten Million Dollars
24 (\$10,000,000.00).

25 149. Colonize is informed and believes and thereon alleges that, in committing
26 the breach of duty as described above, Palmer was guilty of malice and/or oppression
27 with the deliberate intent to injure Colonize's business and improve his and Tango's
28 own business and acted with conscious disregard for Colonize's rights and for his own

1 duty to Colonize as the Chief Operating Officer of Colonize, thereby warranting an
2 award of punitive damages in an amount appropriate to punish Palmer and deter others
3 from engaging in similar misconduct.

4 **AS AND FOR A TENTH CAUSE OF ACTION**

5 **(Faithless Servant/Breach of Duty of Loyalty)**

6 **(by Colonize against Palmer)**

7 150. Colonize repeats, re-alleges and incorporates by reference in this paragraph
8 the allegations set forth in Paragraphs 1 through 149, inclusive, and incorporates them
9 by reference as though set forth fully herein.

10 151. From the time that Colonize hired Palmer, he was in the top three highest-
11 ranking, and highly-compensated Officers of Colonize, as well as an agent and servant
12 of Colonize who was obligated to act only in Colonize's best interests and pursuant to
13 applicable laws and Colonize's regulations and policies.

14 152. Palmer owed Colonize duties of loyalty and fidelity, was prohibited from
15 acting in a manner inconsistent with his agency or trust, and was bound to exercise the
16 utmost good faith and loyalty in the performance of his duties for Colonize.

17 153. By knowingly, intentionally and purposefully opening and operating his
18 own digital music distribution company while employed by Colonize and stealing
19 Colonize's trade secrets, intellectual property and physical property, Palmer knowingly
20 and intentionally breached the duties of loyalty, fidelity and good faith that he owed to
21 Colonize as its officer, employee, agent and servant.

22 154. By intentionally engaging in that improper and illegal conduct, Palmer
23 acted in a manner directly adverse to and wholly inconsistent with his agency obligations
24 to Colonize.

25 155. Thus, from at least January 15, 2019 through November 20, 2019 Palmer
26 breached the duties of duty of loyalty and fidelity that he owed to Colonize and was a
27 faithless servant.

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1 156. Palmer's breach his duties of loyalty and fidelity owed to Colonize
2 substantially violated the terms of his employment.

3 157. Palmer engaged in the above acts which constituted breaches of his duties
4 of loyalty and fidelity, intentionally, maliciously and/or with wanton and willful
5 disregard for Colonize's rights and interests.

6 158. Colonize is entitled to, and respectfully demands, judgment in its favor and
7 against Palmer: (i) ordering Palmer to forfeit all improperly obtained remuneration
8 obtained while in breach of his duties of loyalty and fidelity and to disgorge all gains,
9 profits and savings Palmer derived from his illegal conduct; (ii) ordering Palmer to
10 disgorge all monies Colonize paid to Palmer during the time he breached his duties to
11 Colonize and all monies received as a result of those breaches; (iii) awarding the amount
12 of actual damages to Colonize resulting from Palmer's illegal conduct, which are not
13 readably ascertainable, but will be proven at trial and believed to be in excess of Ten
14 Million Dollars (\$10,000,000.00); (iv) awarding punitive damages to Colonize in an
15 amount appropriate to punish Palmer and deter others from engaging in similar
16 misconduct; (v) awarding reasonable attorneys' fees and costs to Colonize in an amount
17 to be determined by the Court; and (vi) awarding for prejudgment and post judgment
18 interest to Colonize at the maximum legal rate, as provided by law, as applicable, as an
19 element of damages which Colonize has suffered as a result of Palmer's acts as a
20 faithless servant.

21 **AS AND FOR AN ELEVENTH CAUSE OF ACTION**

22 **(Intentional Interference with Prospective Economic Relations)**

23 **(by Colonize against Palmer)**

24 159. Colonize repeats, re-alleges and incorporates by reference in this paragraph
25 the allegations set forth in Paragraphs 1 through 158, inclusive, and incorporates them
26 by reference as though set forth fully herein.

27 160. At all times relevant, Colonize was in an economic relationship with the
28 Retail Platforms and Colonize's clients.

1 161. Palmer, as Chief Operations Officer of Colonize, was aware of Colonize's
2 relationships with the Retail Platforms and its clients and the economic benefit generated
3 by the Retail Platforms.

4 162. Palmer improperly withheld the Access Codes from Colonize after his
5 employment with Colonize was terminated.

6 163. By engaging in this conduct, Palmer was substantially certain that his
7 actions would interfere with Colonize's ability to access the money it was due from the
8 Retail Platforms and that Colonize owed to its clients.

9 164. Accordingly, Colonize is entitled to damages from Defendants in an
10 amount not readily ascertainable, but to be proven at trial and believed to be in excess
11 of Ten Million Dollars (\$10,000,000.00).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff Colonize respectfully prays for judgment as follows:

14 1. On the First Cause of Action by Colonize as against all Defendants for their
15 violation of the Defending Trade Secrets Act, 18 U.S.C. § 1836, granting Colonize
16 damages in an amount not readily ascertainable, but to be proven at trial and believed to
17 be in excess of Ten Million Dollars (\$10,000,000);

18 2. On the Second Cause of Action by Colonize as against all Defendants for
19 their violation of the California Uniform Trade Secrets Act, Cal. Civ. Code § 3426.1,
20 granting Colonize damages in an amount not readily ascertainable, but to be proven at
21 trial and believed to be in excess of Ten Million Dollars (\$10,000,000), together with
22 exemplary damages, and attorney's fees as provided for in the statute;

23 3. On the Third Cause of Action by Colonize as against all Defendants for
24 their violation of the Unfair Competition Laws under California Business and
25 Professions Code § 17200 *et seq.*, granting Colonize damages in an amount not readily
26 ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars
27 (\$10,000,000); an order of restitution requiring Defendants to restore to Colonize all
28 monies and/or property acquired by means of Defendants' unlawful, unfair and

1 fraudulent business practices; and temporary, preliminary and permanent injunctive
2 relief against Defendants;

3 4. On the Fourth Cause of Action by Colonize as against all Defendants for
4 unjust enrichment, granting Colonize damages in an amount not readily ascertainable,
5 but to be proven at trial and believed to be in excess of Ten Million Dollars
6 (\$10,000,000);

7 5. On the Fifth Cause of Action by Colonize as against Palmer for violation of
8 the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, granting Colonize
9 damages from Palmer in excess of Ten Million Dollars (\$10,000,000.00), together with
10 injunctive relief prohibiting Palmer from further accessing, using, or benefitting from in
11 any way, Colonize's trade secrets, confidential business information, Hard Drive,
12 Proprietary Computer Program, SR Codes, Metadata, tangible computer equipment,
13 systems, and network;

14 6. On the Sixth Cause of Action by Colonize as against Palmer for violation of
15 California Penal Code § 502, granting Colonize injunctive relief, compensatory
16 damages, punitive or exemplary damages in excess of Ten Million Dollars
17 (\$10,000,000.00), attorneys' fees, costs and other equitable relief provided by the
18 statute;

19 7. On the Seventh Cause of Action by Colonize as against Palmer for trespass
20 to chattels, granting Colonize damages in an amount not readily ascertainable, but to be
21 proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000);

22 8. On the Eighth Cause of Action by Colonize as against Palmer for conversion,
23 granting Colonize damages in an amount not readily ascertainable, but to be proven at
24 trial and believed to be in excess of Ten Million Dollars (\$10,000,000), as well as
25 punitive damages in an amount appropriate to punish Palmer and deter others from
26 engaging in similar misconduct;

27 9. On the Ninth Cause of Action by Colonize as against Palmer for breach of
28 the duties of loyalty and fidelity, granting Colonize actual and/or consequential damages

1 in an amount not readily ascertainable, but to be proven at trial and believed to be in
2 excess of Ten Million Dollars (\$10,000,000), as well as punitive damages in an amount
3 appropriate to punish Palmer and deter others from engaging in similar misconduct;

4 10. On the Tenth Cause of Action by Colonize as against Palmer for faithless
5 servant/breach of his duties of loyalty and fidelity, ordering Palmer to forfeit all
6 improperly obtained remuneration obtained while in breach of his duties and to disgorge
7 all gains, profits and savings Palmer derived from his illegal conduct; to disgorge all
8 monies Colonize paid to Palmer during the time he breached his duties to Colonize and
9 all monies received as a result of those breaches; the amount of actual damages to
10 Colonize resulting from Palmer's acts while in breach of his duty and loyalty, which are
11 not readily ascertainable, but will be proven at time of trial believed to be in excess of
12 Ten Million Dollars (\$10,000,000.00); an award of punitive damages in an amount
13 appropriate to punish Palmer and deter others from engaging in similar misconduct; for
14 reasonable attorneys' fees and costs in an amount to be determined by the Court; and for
15 prejudgment and post judgment interest at the maximum legal rate, as provided by law;

16 11. On the Eleventh Cause of Action by Colonize as against Palmer for
17 intentional interference with prospective economic relations, granting Colonize damages
18 in an amount not readily ascertainable, but to be proven at trial and believed to be in
19 excess of Ten Million Dollars (\$10,000,000);

20 12. Ordering that Defendants pay all of Plaintiff's costs, disbursements and
21 reasonable attorneys' fees;

22 13. Ordering that Defendants be required to pay to Plaintiff prejudgment
23 interest at any applicable statutory rate; and

24 14. Granting all such other and further relief to Plaintiffs as the Court may deem
25 just and appropriate.

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DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable.

Dated: July 29, 2020

Respectfully submitted,

HEFNER STARK & MAROIS, LLP

By:



Thomas P. Griffin, Jr., Esq.

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